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COMMITTEE AGAINST TORTURE

Tenth session

SUMMARY RECORD OF THE THIRD PART (PUBLIC)* OF THE 142nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 21 April 1993, at 5 p.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Supplementary report of Panama (continued)

Initial report of Peru

Supplementary report of Hungary (continued)

* The summary record of the first part (public) of the meeting appears as document CAT/C/SR.142, and that of the second part (closed) of the meeting as document CAT/C/SR.142/Add.1.

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The resumed meeting was called to order at 5 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Supplementary report of Panama (continued) (CAT/C/17/Add.7)

1. At the invitation of the Chairman, Mr. Saenz Fernandez (Panama) took a place at the Committee table.

2. Mr. SORENSEN (Country Rapporteur) read out the following text of the Committee's findings:

"The Committee against Torture examined the supplementary report of Panama on 21 April 1993.

When examining the initial report of Panama on 23 April 1991, the Committee, in its conclusion, among other things raised some questions and asked the Government of Panama to take these and other remarks by the Committee into account in its periodic report, and furthermore asked the Government of Panama to give a full description of the measures taken - in legislation and in practice - to implement each article of the Convention.

The supplementary report fulfils all these expectations, and the Committee concludes that:

1. The law system in Panama is generally in accordance with the principles set forth in the Convention, but it appeared to the Committee that the constitutional provisions relating to police officers and the defence of superior orders do not accord with article 2, paragraph 3, of the Convention;

2. The system described is geared to ensure the highest possible way of protecting human rights for the individual;

3. The Committee, with satisfaction, took note of the penal system and the ideas behind 'non-imprisonment';

4. The Committee accepts the report and expresses its satisfaction with the timing and the content of the report, but expresses its hope that the Government of Panama will soon declare in favour of the Convention's article 22."

3. The CHAIRMAN said that the Committee's findings would appear in the summary record of the current meeting, but a preliminary text could be provided to the representatives of Panama if they so desired. He reiterated the Committee's appreciation of the Panamanian authorities' close collaboration with the Committee and the details provided.

4. Mr. Saenz Fernandez (Panama) withdrew.

Initial report of Peru (CAT/C/7/Add.15)

5. The CHAIRMAN announced that the Committee would not be considering the initial report of Peru at its current session; consideration had been postponed until November 1993.

Supplementary report of Hungary (continued) (CAT/C/17/Add.8)

6. At the invitation of the Chairman, Mr. Boytha, Mr. Lontai and Mr. Szapora (Hungary) took seats at the Committee table.

7. Mr. BOYTHA (Hungary) thanked the members of the Committee for their interest in his country's report and for their questions. He also thanked Mr. Mikhailov for his kind remarks about Hungary's traditional love of liberty.

8. It had been asked whether torture, as conceived in the Convention, could mean, in Hungarian law, an aggravating circumstance attending certain acts which involved deprivation of personal freedom. It could. Article 228 of the Criminal Code sanctioned punishment for such acts, and the penalties had been increased under Act 17 of 1993, which also obliged judges to deal very severely with such offences, taking into account article 4 of the Convention.

9. With regard to abolition of the death penalty, public opinion polls had revealed a slight majority in favour of abolition. Progressive abolition of harsh penalties was a tradition of Hungarian legal doctrine, and it should not be difficult to follow up the Constitutional Court's opinion that the death penalty should be abolished not only for political offences but for other offences to which it had hitherto been applicable.

10. Punishment of acts related to torture could only be carried out according to the Criminal Code. There were various procedures and provisions, relating to matters such as detention, minority groups, individual rights and so forth, which enabled courts to reach findings on the basis of facts related to allegations of torture, but punishment must be strictly according to penal law.

11. Cases involving evidence found to have been obtained by infringement of the law, such as statements obtained under duress, were always deemed invalid and were at the same time punishable under the Criminal Code, article 227 of which established prison sentences of up to five years for persons found guilty of obtaining evidence by such methods.

12. With regard to the role and power of enforcement judges, the latter were competent to take decisions on all matters relating to detention, but Act XXXII of 1993 clearly established that any such decisions were open to appeal.

13. A question had been asked about the availability of statistics on the number of police officers who had been sentenced. Statistics up to 1990 were available in the report but subsequent statistics only covered the total number of persons in detention, namely, about 6,000, of whom 4,000 were in pre-trial detention. Those figures could be compared with the total

population of Hungary (10 million, including refugees). The number of police officers detained for torture-like activities such as physical abuse, questioning under duress or unlawful detention was not available.

14. Mr. Ben Amman had asked about the ombudsman system. The functions of ombudsmen were specified in the Constitution itself; Parliament was currently discussing a bill which would implement chapter V of the Constitution in that regard. A new law was expected soon.

15. There were two kinds of ombudsmen in Hungary, one for the protection of civil rights and the other for the protection of national and ethnic minority rights. The duty of the ombudsman on civil rights was to investigate any allegation of abuse of constitutional rights that had come to his attention and to initiate general or particular measures for redress, taking into consideration laws which were domestically applicable. The ombudsman for national and ethnic minority rights performed similar functions in the field of those rights. Both ombudsmen were elected by Parliament after nomination by the President; a two-thirds majority of members was required. For the protection of certain constitutional rights, Parliament might elect a separate ombudsman. The office of ombudsman constituted a major guarantee against torture; anyone could propose that the ombudsman should take action.

16. A further question had related to revision of the court system. No bill had yet been submitted for that purpose but discussions were taking place among lawyers concerned, the Ministry of Justice and the Supreme Court. The Supreme Court wished to change the administration of justice from a three-level to a four-level system in order to expedite matters; the lower courts were currently overburdened and appeals took time.

17. It had been asked whether the Convention had already been referred to by the courts in Hungary. In that connection, it had been made clear on a number of occasions that the Convention had been observed since its promulgation. In court anybody could refer to the Convention and judges could refer to it directly. Domestic law had, however, proved sufficient so far and no direct reference to the concept of torture or any other matters covered in the Convention had been required. Hungary continued to bring its own legislation into line with the provisions of the Convention; Parliament had adopted a number of Acts for the implementation of the Convention and similar Acts had been promulgated at a lower level. Domestic law would therefore become increasingly adequate for judges, thus making it unnecessary to refer to the Convention itself.

18. A question had been asked about the consequences of refusal to obey an order by a police or military authority to commit an offence covered by the Convention. Some information on that point was contained in the report. Article 123 of the Criminal Code provided that a soldier was not punishable for carrying out an order unless he knew that in so doing he would be committing an offence. Article 122 applied in full to the police forces as well as to law-enforcement agents, and refusal to obey an order to commit a prohibited offence was also permitted under service regulations.

19. The Press Act had also been referred to and raised a very important issue because the press could be abused but at the same time it could help to prevent torture and to unearth activities involving torture. The 1986 Press Act had been amended by Act XI of 1990. Under the latter Act the commission or instigation of an offence, the protection of public morals and respect for the personal rights of others were the only limitations on freedom of the press. That amendment entitled any person, natural or juridical, to establish a periodical or a local radio or television studio, whereas previous legislation had recognized that right only for the State or social and economic organizations and associations. Cases in which a permit concerning press activity could be refused or a publication banned were enumerated by law and Parliament was considering further liberalization in that regard. A bill on the regulation of the media was also being debated in Parliament and it was hoped that it would shortly be enacted. The Constitutional Court had already taken Parliament to task for failing to enact such a law, so it was hoped that the law on the media and a further easing of press legislation would become effective in the near future.

20. A law on the rights of national and ethnic minorities had been envisaged for some time past and was already in the form of a bill before Parliament. An English translation of that bill was available. The bill had been discussed in the Council of Europe in Strasbourg and had been found to represent a good approach to the issue; it covered all aspects and needs of minorities, both national and ethnic.

21. A question had been asked about Hungary's accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights relating to abolition of the death penalty. A bill providing for Hungary's accession to that Protocol was currently before Parliament. Hungary had co-sponsored the Protocol which he thought, would shortly come into force, so that provision would be made for monitoring acts of torture on the spot.

22. A question had also been asked about the competence of courts to apply coercive measures, and in particular whether such measures could only be applied under a decision by a court and what such coercive measures comprised. In reply, he wished to say that the Code of Criminal Procedure had been amended by Act XXXII of 1993, which provided that any coercive measure could be decided only by the court itself, except in cases where the police were taking into custody an individual who, it was thought, might try to escape or commit further criminal offences or go into hiding. Such individuals could be held for 72 hours but the prosecutor then had to submit a recommendation for detention to the court. At that point, if the court endorsed the recommendation, custody became detention.

23. The most important coercive measure was detention itself which was supervised by the enforcement judge. Coercive measures were enumerated in the Code of Criminal Procedure of which a translation could be made if the Committee desired.

24. A question had been asked about the global revision of the procedure for and enforcement of penal sentences and other measures. In that connection, Act XXXII of 1993 represented an overall measure for improving all relevant provisions of the law.

25. An important question had been asked as to how the law provided for the provision of information to detainees regarding their rights. Act XXXII of 1993 provided that every detainee must be informed, in his mother tongue, of his rights as they related to all phases and aspects of his detention. It was the responsibility of the judge to provide such information in court. Detainees also had the right to communicate with a lawyer. The critical moment was the time of detention; at that point, the suspect must be informed of all his rights. Those rights were fully detailed and, for example, each detainee was currently entitled to 10 cubic metres of prison space.

26. A further inquiry related to control over prisons and similar institutions. Such entities were administered by the Ministry of Justice. Supervision was the responsibility of the General Prosecutor and competent lower prosecutors in all institutions administered by the Ministry of Justice. An appeal was possible against any decision taken by the enforcement judge at the pre-trial stage.

27. It had been asked whether, in a pluralistic society, pluralization was confined to Parliament and parties or whether society as such could organize itself in a pluralistic manner with special regard to control over guarantees. Human rights were already protected by legislation. Their implementation was protected by the ombudsman system. The largest minority in Hungary were the gypsies, who had formed about 150 associations. There was also a parliament of gypsies, which exercised control of a political nature that could influence the Government and denounce any cruelty or inhuman treatment of the gypsy minority. Smaller minorities had their own associations. As to professional groups, the influential Hungarian Lawyers' Association constituted a guarantee of respect for human rights, including protection against torture.

28. It had also been asked whether Hungarian law and enforcement provided sufficient protection against torture other than that perpetrated during law enforcement. There was a substantial list of relevant acts in the Criminal Code, including murder, aggravated assault, physical injury, violation of personal liberty, kidnapping - to which reference was made in Hungary's report, robbery, blackmail, undue pressure and any abuse of official authority. All were punishable.

29. On the issue of extradition, if no agreement existed with a country whose national should be prosecuted for torture, Hungary would have recourse to the Convention itself; the question then was whether or not Hungary had adopted the principle of universal jurisdiction. In that connection he referred to paragraphs 304 and 305 of Hungary's initial report. Hungary would extradite even when it did not have an extradition agreement. On a previous occasion, the representative of Hungary had said that Hungary could initiate proceedings against a national of another State who had committed an act of torture either on the basis of the Convention or on that of its own national legislation. As to whether Hungarian practice conformed to articles 6 and 7 of the Convention, the representative had said that a national of another State suspected of

having committed an offence specified in the Convention was subject to the same treatment and procedures as a Hungarian national. Under the Convention, problems relating to extradition must be settled according to the principles of universal jurisdiction. That was Hungary's interpretation of how it applied articles 6 and 7 of the Convention.

30. Reference had been made to allegations by Amnesty International regarding camps in Hungary where torture had been used. That development had occurred only a few days earlier but had been referred to the authorities in Hungary, from whom a reply had already been received to the effect that the allegations involved one-sided statements made by alleged victims. Under Hungarian law, each victim had the right to turn to a competent local prosecutor to request proceedings against the enforcement authorities. Information to date indicated that no such report had so far reached any prosecutor; that did not mean that a report would not be made later as the alleged events were of very recent date. It would seem premature, however, to deal with those allegations as the full facts of the case were not yet available.

31. Mr. LONTAI (Hungary) said that he would like to inform the Committee of measures taken under articles 7-12, and in particular article 10, of the Convention.

32. Necessary information on human rights, including those set forth in international conventions, could be obtained by citizens from the official gazette, the press and professional publications. In that connection, he referred to the Acta Humana series published by the Hungarian Centre for Human Rights, issue No. 4 of which contained a study analysing the Convention against Torture.

33. In law faculties and in the police academy, students received information within the framework of international and criminal law. Even in primary schools, essential information was provided in citizenship courses. Prison staff were taught at the postgraduate level and one of the subjects related to their work in connection with international conventions. Teachers were provided with necessary information. Civilians in the medical profession were instructed on the issue of the prohibition of torture and the standards of conduct expected of them. Such issues also formed part of postgraduate training for teachers, who were provided with manuals by the United Nations Centre for Human Rights.

34. The CHAIRMAN asked whether all questions asked by members had been answered.

35. Mr. LORENZO said that he still had some doubt whether Hungarian criminal law was in complete alignment with article 4 of the Convention and whether it covered all the types of offences which came under the definition of torture contained in article 1.

36. Mr. BOYTHA (Hungary) said that every effort was being made to amend the Criminal Code in order to bring it into line with article 1. If, in the event of doubt, a judge could not subsume a specific act of torture under existing Hungarian provisions as contained in one or other domestic law, then he might have direct recourse to the Convention by stating that any act concerning torture punishable under the Criminal Code should be interpreted so as to accord with the Convention. If domestic law was not sufficient, then its amendment would become necessary. No such case had arisen in practice.

37. The CHAIRMAN announced that the Committee had thus completed its discussion on the report of Hungary.

38. Mr. Boytha, Mr. Lontai and Mr. Szapora (Hungary) withdrew.

The meeting rose at 6.05 p.m.